

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DENNIS W. WILLINGHAM,

Plaintiff,

v.

No. CIV-11-0508 LAM

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEY'S FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on Plaintiff's *Motion for Attorney Fees Pursuant to Equal Access to Justice Act, With Memorandum in Support Thereof* (Doc. 21) in the amount of \$6,611.63 for attorney's fees. In his response (Doc. 22), the Commissioner does not object to Plaintiff's request for attorney's fees in this amount. The Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised **FINDS** that Plaintiff's motion is well-taken and will be **GRANTED**.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's *Motion for Attorney Fees Pursuant to Equal Access to Justice Act, With Memorandum in Support Thereof* (Doc. 21) is **GRANTED**, and Plaintiff Dennis W. Willingham is authorized to receive **\$6,611.63** for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, he shall refund the smaller award to

Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (“Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant’s past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant’s attorney must ‘refun[d] to the claimant the amount of the smaller fee.’”) (citation omitted).

IT IS SO ORDERED.

Lourdes A. Martinez

LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE